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HAIER GROUP CORPORATION

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

CYBERSITTER, LLC, a California  
limited liability company, d/b/a Solid  
Oak Software,

Plaintiff,

v.

THE PEOPLE'S REPUBLIC OF  
CHINA, a foreign state; ZHENGZHOU  
JINHUI COMPUTER SYSTEM  
ENGINEERING LTD., a Chinese  
corporation; BEIJING DAZHENG  
HUMAN LANGUAGE TECHNOLOGY  
ACADEMY LTD., a Chinese  
corporation; SONY CORPORATION, a  
Japanese Corporation; LENOVO  
GROUP LIMITED, a Chinese  
corporation; TOSHIBA  
CORPORATION, a Japanese  
corporation; ACER INCORPORATED, a  
Taiwanese corporation; ASUSTEK  
COMPUTER, INC., a Taiwanese  
corporation; BENQ CORPORATION, a

Case No. 10-cv-00038-JST (SH)

**HAIER GROUP CORPORATION'S  
NOTICE OF MOTION AND  
MOTION TO DISMISS FOR LACK  
OF PERSONAL JURISDICTION  
AND FAILURE TO JOIN A  
NECESSARY INDISPENSABLE  
PARTY**

DATE: July 18, 2011  
TIME: 10:00 a.m.  
CTRM: 10A  
JUDGE: Josephine Staton Tucker

1 Taiwanese corporation; HAIER GROUP  
 2 CORPORATION, a Chinese corporation;  
 3 DOES 1-10, inclusive,

Defendants.

4 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

5 **PLEASE TAKE NOTICE** that on July 18, 2011 at 10:00 a.m., or as soon  
 6 thereafter as counsel may be heard by the above-entitled Court, located at West  
 7 Fourth Street, Courtroom 10A, Santa Ana, CA 92701, Defendant Haier Group  
 8 Corporation (“HGC”) will and hereby does move for an order dismissing the  
 9 amended complaint against it based upon Federal Rule of Civil Procedure 12(b)(2)  
 10 for lack of personal jurisdiction, and/or Federal Rule of Civil Procedure 12(b)(7) for  
 11 failure to join a necessary indispensable party under Rule 19.

12 HGC moves the Court to dismiss the complaint against it for lack of personal  
 13 jurisdiction because the plaintiff CYBERSitter, LLC (“CYBERSitter”) has failed to  
 14 establish a *prima facie* case of personal jurisdictional over HGC. Although  
 15 CYBERSitter alleges that HGC conducts business in this district in its own capacity  
 16 and through its wholly-owned subsidiary, Am. Compl. ¶¶ 10 & 22, these are bare  
 17 allegations not supported by any fact allegations and are contradicted by HGC.  
 18 HGC is a privately-held, Chinese holding company that does not engage in any  
 19 commercial or business activities anywhere in the world. HGC has not had any  
 20 contact with this district or with the State of California, and HGC has no employees  
 21 and owns no property in California. HGC directly and indirectly holds stocks in  
 22 other companies, one of which being the “Haier America” entity identified by  
 23 CYBERSitter. However, HGC has no involvement with the operation of Haier  
 24 America, and therefore any alleged liability of Haier America cannot be attributed to  
 25 HGC. In short, there is no basis on which this Court may reasonably exercise  
 26 personal jurisdiction over HGC. The complaint against HGC should therefore be  
 27 dismissed for lack of personal jurisdiction.

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1 HGC also moves the Court to dismiss the complaint in its entirety for failure  
 2 to join a necessary and indispensable party – the People’s Republic of China  
 3 (“PRC”) government – as required under Rule 19. As CYBERSitter’s complaint  
 4 makes clear, this entire action arises out of the “Chinese government-led” “Green  
 5 Dam Initiative” and PRC’s directive “mandating ... every computer shipped in  
 6 China must have the Green Dam software pre-installed on or packaged with the  
 7 computer, Am. Compl. ¶¶ 1 & 35. Therefore, the PRC is a necessary party because  
 8 it is expected to have, in its possession, documents and testimonial evidence that  
 9 may prove, or disprove, Plaintiff’s allegations. However, PRC is immune from this  
 10 suit under the Foreign Sovereign Immunities Act. As such, the entire case may not  
 11 proceed and should be dismissed because a required-entity sovereign is not  
 12 amenable to suit.

13 This motion is based upon this Notice of Motion and Motion, the  
 14 Memorandum of Points and Authorities, the Declaration of Cuimei Zhang, all  
 15 judicially noticeable facts, all pleadings and papers on file in this action, and upon  
 16 such other matters as may be presented to the Court prior to or at the time of the  
 17 hearing regarding this motion.

18 This motion is made following the conference of counsel pursuant to L.R. 7-3,  
 19 which took place on May 18, 2011.

20 DATED: June 8, 2011 Respectfully submitted,  
 21 ALSTON & BIRD LLP

22  
 23 By: /s/ Elizabeth H. Rader  
 24 Elizabeth H. Rader  
 Attorneys for Defendant  
 25 HAIER GROUP CORPORATION

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